

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ROBERT THREAT,

Petitioner,

v.

SHIRLEE HARRY,

Respondent.

CIVIL NO. 2:17-CV-12465

PAUL D. BORMAN

UNITED STATES DISTRICT JUDGE

**OPINION AND ORDER: (1) GRANTING THE MOTION TO AMEND
PETITION FOR WRIT OF HABEAS CORPUS, (2) ORDERING THAT THE
ORIGINAL AND THE AMENDED PETITIONS (Dkts. # 1, # 6) BE SERVED
UPON THE RESPONDENT AND THE MICHIGAN ATTORNEY
GENERAL, AND (3) DIRECTING RESPONDENT TO FILE AN ANSWER
AND THE RULE 5 MATERIALS IN THIS CASE**

Robert Threat, (“Petitioner”), confined at the West Shoreline Correctional Facility in Muskegon Heights, Michigan, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. In his application, filed *pro se*, petitioner challenges his conviction and sentence for second-degree criminal sexual conduct and being a fourth felony habitual offender. Petitioner has also filed additional documentation raising additional claims, which is construed as a motion to amend the habeas petition. The motion to amend the petition is granted. The Clerk of the Court shall serve a copy of the petition for writ of habeas corpus and the amended petition for

writ of habeas corpus upon respondent and the Michigan Attorney General's Office by first class mail. Respondent shall file an answer to the petition and the amended petition and the Rule 5 materials within **one hundred and eighty (180)** days of the Court's order.

The Court grants petitioner's motion to amend his habeas petition. Notice and substantial prejudice to the opposing party are the critical factors in determining whether an amendment to a habeas petition should be granted. *Coe v. Bell*, 161 F.3d 320, 341-342 (6th Cir. 1998). The motion to amend the petition is granted, because there is no evidence of bad faith on petitioner's part in bringing the motion to amend or prejudice to respondent if the motion is granted. *See Gillette v. Tansy*, 17 F.3d 308, 313 (10th Cir. 1994).

The Clerk of the Court shall serve a copy of the habeas petition [Dkt. # 1], a copy of the amended petition for writ of habeas corpus [Dkt. # 6], and a copy of this Order on Respondent and on the Attorney General for the State of Michigan by first class mail as provided in Rule 4 of the Rules Governing § 2254 Cases, Rule 4. *See Coffee v. Harry*, No. 04-71209, 2005 WL 1861943, p. 2 (E.D. Mich. Aug. 2, 2005). Respondent shall file an answer to the petition and the amended habeas petition within one hundred and eighty days of the Court's order. *See Erwin v. Elo*, 130 F. Supp. 2d 887, 891 (E.D. Mich. 2001); 28 U.S.C. § 2243. Respondent is

also ordered to provide this Court with the Rule 5 materials at the time that it files its answer. See *Griffin v. Rogers*, 308 F.3d 647, 653 (6th Cir. 2002); Rules Governing § 2254 Cases, Rule 5, 28 U.S.C. foll. § 2254.

Petitioner has forty five days from the receipt of the answer to file a reply brief, if he so chooses. See Rule 5(e) of the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254.

ORDER

IT IS ORDERED THAT:

(1) The motion to amend the petition for writ of habeas corpus is **GRANTED**.

(2) The Clerk of the Court shall serve a copy of the petition for writ of habeas corpus [Dkt. # 1], a copy of the amended petition for writ of habeas corpus [Dkt. # 6], and a copy of this Order on Respondent and the Attorney General by first class mail.

(5) Respondent shall file an answer and produce the Rule 5 materials within **one hundred and eighty (180) days** of the date of this order or show cause why they are unable to comply with the order.

(6) Petitioner shall have **forty five days** from the date that he receives the answer to file a reply brief.

SO ORDERED.

s/Paul D. Borman

PAUL D. BORMAN

UNITED STATES DISTRICT JUDGE

Dated: September 12, 2017

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on September 12, 2017.

s/Deborah Tofil

Case Manager